First Principles.

NATIONAL SECURITY AND CIVIL LIBERTIES

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Coming: FEB: Right of the Congress to Information

In The News

December 1, 1975 Deputy Attorney General Harold R. Tyler, Jr. waived over $20,000 in search fees proposed by the FBI for the release of records under the Freedom of Information Act in the Rosenberg espionage case. Tyler stated the documents should be made public because of current public interest and historical significance.

December 9, 1975 Asked to comment on "national security" surveillances in confirmation hearings on his appointment to the Supreme Court, Judge John Paul Stevens stated, *"my general reaction would be that A, it [the government] bears a heavy burden, and B, it bears some burden of factual presentation to enable a fact finder to know that this is not merely a formula of words that is being used to justify something other than a real security interest."*

December 10, 1975 The Senate Select Committee on Intelligence has received documents revealing that President Johnson used wiretaps installed for national security purposes on embassies in order to gain information about the political activities of members of Congress and prominent citizens who opposed the Vietnam war. The original Johnson request on March 14, 1966 led the Bureau to send a report for the period July 1, 1964-March 17, 1966. Subsequently, the taps were screened for political material and reports sent bi-weekly to the White House, until the end of the Johnson Administration. (*Washington Post*, Dec. 10, 1975, p. A1)

December 12, 1975 The Justice Department released the text of a draft of proposed guidelines covering the intelligence gathering operations of the FBI. See "Remedies" p. 13.

December 13, 1975 Assistant Secretary of State for African Affairs Nathaniel Davis reportedly resigned last August in protest when Henry Kissinger rejected the African Bureau's advice that the U.S. seek a diplomatic solution in Angola and play no active role in the civil war there. (Seymour Hersh, *New York Times*, Dec. 14, 1975, p. 1)

December 15, 1975 George Bush, Ford's nominee to replace Colby as CIA head, expressed at his confirmation hearing his concern about former CIA employees who disclose national security matters. He supported the Rockefeller Commission recommendation that legislation be enacted to make such actions criminal.

December 17, 1975 In a statement submitted to the House Select Committee on Intelligence, the FBI revealed that its "Adex" list of individuals considered dangerous to national security in the event of an emergency includes 110 members of the Socialist Worker's Party. An FBI official testified however that there have been no criminal indictments of party members in 30 years extensive surveillance and that the group is non-violent.

December 18, 1975 Documents obtained by the Sen. Select Committee on Intelligence revealed that the FBI sent an anonymous letter to the board of trustees of the University of Chicago in an effort to have a professor active in the anti-war movement fired. The letter apparently produced no discernible results on the part of the university. Prof. Richard Flacks, however, was severely beaten some months later by an unidentified assailant in an attack with probable political motives. The Sen. Committee has found no evidence that the FBI was involved in that assault. (*New York Times*, Dec. 18, 1975, p. 30)

December 18, 1975 Citing well-informed officials, Seymour Hersh of the New York Times reported that the first major build-up of CIA involvement in Angola began in January, 1975—two months before the first significant Soviet build-up. William E. Colby of the CIA had earlier told a congressional committee that the U.S. had increased its involvement in Angola in order to counter increased Soviet action there. (*New York Times*, Dec. 19, 1975 p. 1)

December 28, 1975 The FBI was reported to have wiretapped and bugged conversations between J. Robert Oppenheimer and his lawyers during Atomic Energy Commission hearings on revoking Oppenheimer's security clearance. (*Washington Post*, Dec. 28, 1975 p. 1.)

It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to first principles.

THOMAS PAINE

In The Courts

December 1, 1975 *Philippi v. CIA*, Civ. No. 75-1265 (D.D.C.). Government motion for summary judgment granted in FOIA case requesting documents related to CIA effort to suppress the Glomar Explorer story. Over plaintiff's objection, the court read two affidavits submitted by the government *ex parte in camera* and ruled that the documents, if they exist, are covered by 50 U.S.C. 403(d)(3) and 403g and are exempt from disclosure under exemption (3) of the FOIA.

December 15, 1975 *Securities and Exchange Commission v. Lockheed Aircraft*, Misc. #75-0189 (D.D.C.). Judge John H. Pratt ordered Lockheed to turn over to the SEC documents pertaining to possible illegal actions overseas. The State Department emphasized that while it did not want to shield an American company from the consequences of illegal actions abroad, it was concerned about the effects of "premature disclosure"; Judge Pratt ordered that the SEC give Lockheed and the State Department an opportunity to apply to the Court for relief before disclosing the information to third parties.

December 16, 1975 Szulc v. Erhlichman, et al., Civ. Action #74-1055 (D.D.C.) Government memorandum filed in the warrantless wiretap lawsuit of journalist Tad Szulc and his wife Marianne reveal that on at least one occasion the Justice Department has obtained a warrant for a "national security" wiretap on an American citizen based on a standard other than the probable cause standard required by the Safe Streets Act. The memorandum stated that the Justice Department no longer contends that the warrantless "national security" wiretaps which were placed on the telephones of 17 officials and newsmen by the Nixon White House, allegedly to stop leaks, were legal.

December 16, 1975 Pending State Department approval, the Justice Department is reportedly prepared to file an anti-trust suit against Bechtel, Inc. for allegedly participating in the Arab boycott of Israel. The suit would involve new interpretations of anti-trust law and present U.S. companies with the choice between losing billions in Arab trade and being charged with criminal violations of U.S. law. A spokesperson for the company stated it was the company's position that it is not illegal under present Federal law to refuse to trade with Israel. (*Washington Post*, Dec. 17, 1975, p. A1)

December 16, 1975 Fonda v. Gray, Civil Action No. 73-2442-MML (C.D. Cal.). In her lawsuit for damages against the FBI, Actress Jane Fonda submitted documents provided by the Senate Select Committee on Intelligence Activities which indicated that the FBI may have sent to a Hollywood columnist a phony letter which described her as leading a Black Panther rally in a foul-mouthed cheer for the assassination of Richard Nixon. Fonda called the Hoover plan part of *"an organized systematic attempt . . . to make those of us who opposed the Nixon Administration appear irresponsible, dangerous and foul-mouthed."* The Court instructed the government to turn over any similar Cointelpro documents to Fonda.

In The Congress

December 4, 1975 The Senate Select Committee on Intelligence Activities released its staff report on "Covert Action in Chile: 1963-73." See Point of View, on page 16.

December 5, 1975 The Senate Select Committee on Intelligence Activities conducted public hearings on what restrictions should be put on covert operations. For a summary of the testimony on covert operations and later hearings on the FBI intelligence function, see page 13.

In The Literature

Magazines

"Notes Toward a Definition of National Security," by Richard D. Cotter, *Washington Monthly*, Dec. 1975, p. 4. A former chief of the Research Section of the Intelligence Division of the FBI describes the process by which the FBI intelligence function developed; he advocates a statute which would permit such investigation only when an organization was encouraging the use of violence.

"Should We Play Dirty Tricks In the World?" by Leslie H. Gelb, *New York Times Magazine*, December 10, 1975, p. 10. States the dilemma about U.S. covert operations abroad revolves around how much to restrict them, and offers six suggestions to control and limit such operations.

"Scarcely a Full Report," by Rep. Elizabeth Holtzman, *The Nation*, December 27, 1975, p. 678. Holtzman contends that the Report of the Watergate Special Prosecution Force fails to address the issues which Congress directed it to cover.

"Probable Cause," by J. S. Fuerst, *The Progressive*, January, 1976, p. 30. Relates how the FBI carried out a misdirected search on the author's own house which sparked his interest on legal rulings regarding the Fourth Amendment and "probable cause."

Law Reviews

"Sunken Soviet Submarines and Central Intelligence: Laws of Property and the Agency," by Alfred P. Rubin, 69 Am. J. Int'l. L. 855 (1975). A note on the legal arguments surrounding the US attempt to raise the Glomar Explorer; suggests that such a clandestine action may raise doubt as to the credibility of the US position on other law of the sea issues.

Government Publications

"Covert Action in Chile, 1963-1973," Staff Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, United States Senate (Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 80¢). See Point of View, page 16.

Books

They've Killed the President, by Robert Sam Anson (New York: Bantam, 1975) Reviews the available evidence regarding the Kennedy assassination, including many documents recently released under the FOIA. Argues that there was a conspiracy to kill John Kennedy and that it probably included the Mafia, anti-Castro Cubans, and low-level CIA officials opposed to rapprochement with Cuba.

Reports

"Report on the Espionage and Secrecy Provisions of the Proposed New Federal Criminal Code," by the Special Committee on Communications Law of the Association of the Bar of the City of New York. (42 W. 44th St., New York 10036). The Report opposed the espionage and secrecy provisions in pending bill S. 1, stating that the *"concepts embodied in the new provisions ignore the profound importance of public awareness of, and debate about, issues of national security,"* and found that the bill would permit the coverup of illegal activities and undermine First Amendment freedoms. The Report also recommends that government officials be subjected to criminal penalties only for the disclosure of "specifically defined classes of especially sensitive information" to be determined by Congress. As regards the press and the public, the Report concludes that *"it can be argued with considerable force that there should be no prohibition whatever. . . . If there are to be prohibitions, they should be defined so as to apply only to the rarest and most threatening instances."*

Editor's Note: Red Squads

Since Watergate, the steady flow of well-publicized revelations about the abuse of power by federal agencies has given the impression that using a claim of overriding national security interests to infringe civil liberties has been the aberration of only the federal government. But there has been a less-publicized, parallel threat from state and local levels of government. Local police have formed "Red Squads," generally with technological and financial assistance from federal agencies, and have likewise carried out systematic programs of surveillance and harassment of citizens exercising their political rights.

The Report of the Cook County Grand Jury, which we reprint here in its entirety, is the most comprehensive analysis yet of the ways that protecting the security of the nation has been twisted into a rationale for developing an extensive and intrusive local surveillance apparatus. We will let the report speak for itself, pointing out here only that it reveals an extensive and close working relationship between the Chicago Police Department's Security Section and the federal intelligence agencies.

Given so pervasive a problem, reforming only the federal agencies will not be enough to ensure a return to first principles of political freedom; the Grand Jury Report adds to our discussion of controlling the intelligence agencies a series of recommendations for legislative and administrative reform at the state and local levels.

Improper Police Intelligence Activities

A Report by the Extended March 1975 Cook County Grand Jury

November 10, 1975

Introduction

Scope of Grand Jury Investigation 655

Grand Jury Investigation 655 has been an inquiry into allegations of improper gathering and dissemination of intelligence data by members of the Security Section of the Chicago Police Department's Intelligence Division.

It is important to emphasize at the outset that the allegations (and hence our investigation) did not touch the Chicago Police Department as a whole nor did it consider intelligence functions as they apply to persons or groups proven to be involved in criminal activities.

Undercover agents and informants are important tools needed by law enforcement agencies for the apprehension of criminals and the prevention of crime.

However, when law enforcement officials lose sight of these objectives and use undercover agents and informants to gather information on law abiding citizens for political purposes, these otherwise proper tools of law enforcement become a serious threat to the very foundations of our democratic society.

Grand Jury Investigation 655 focused only on the *abuses* by the Chicago Police Department of these otherwise legitimate investigative tools. Thus, two areas were of primary concern to this Grand Jury:

Intelligence gathering activities which where in direct violation of the criminal law, such as burglary and illegal electronic eavesdropping;

and

The indiscriminate use of undercover agents, informants and surveillance against citizens and groups who were never suspected of criminal conduct nor gave even the slightest indication of criminal intent.

Resistance to the Investigation

Unlike the hundreds of investigations presented during our regular term as Grand Jurors, Investigation 655 had to be conducted without the assistance of the largest law enforcement agency in the State of Illinois, the Chicago Police Department.

Even though a primary duty of the Chicago Police Department is to produce evidence for the Cook County Grand Jury, the Department and the City of Chicago resisted our lawful orders and subpoenas. The coercive powers of the Court were required to force the Department and the City of Chicago to comply.

The Chicago Police Department's failure to assist this Grand Jury seemed to us to be an attempt to frustrate our investigation. The Department's attitude and conduct surprised and disappointed this Grand Jury.

The government of the City of Chicago also deserves critical attention for its role in fostering this lack of cooperation.

The hiring of two "special" attorneys by the City of Chicago to represent *all* Chicago police officers subpoenaed before this Grand Jury achieved a unity of legal control. This effort to "close ranks" contributed to the uncooperative attitude of the Chicago Police Department.

The Decision Not to Vote Indictments

During the investigation this Grand Jury heard from 71 witnesses, some under trying circumstances. In addition to these witnesses, more than 5,000 pages of subpoenaed documents were studied.

The testimony and documents revealed repeated instances of wrongdoing. This evidence could have been the basis for application by the State's Attorney for indictments.

The evidence has clearly shown that the Security Section of the Chicago Police Department assaulted the fundamental freedoms of speech, association, press and religion, as well as the constitutional right to privacy of hundreds of individuals.

Although the Grand Jury strongly believes that public employees who violate their positions of trust should be punished, three factors led us to the conclusion that the return of indictments would not serve the best interests of the community.

The primary factor leading to our decision was the realization that the return of indictments could and probably would be used by city officials to shift the public's attention away from the grave threat to individual rights and freedoms posed by abusive police intelligence activity. This serious threat to our democratic form of government must not be allowed to depend on the conviction or acquittal of a few.

A second reason for our decision was that some individuals who are equally or even more criminally responsible than those against whom indictments could have been returned are protected from criminal prosecution by the expiration of the statute of limitations.

In addition, the culpability of high ranking Chicago Police Officers would be obscured by a criminal trial of a few patrolmen. These police officials were insulated from prosecution by level upon level of police officers who invoked their privilege under the Fifth Amendment to the United States Constitution.

The net effect of a criminal prosecution would be to highlight a few disjointed criminal acts, rather than to present a comprehensive overview of an extremely serious problem. Solutions, not sentences, are of paramount importance in understanding and dealing with this problem.

The third reason for our decision was the quality of the evidence available for criminal prosecution. A number of key witnesses, both civilians and members of the Chicago Police Department, are now deceased. Also, crucial physical evidence has been destroyed.

For example, one instance involved the throwing of a tear gas container into a crowd during a performance of a foreign dance troupe The unexploded tear gas container was subsequently destroyed by the Chicago Police Department.

Further, the Department also destroyed its records of all electronic surveillances conducted prior to January, 1973. Other important corroborative evidence including the files and lists of civilian operatives of the United States Army's 113th Military Intelligence Group have been destroyed.

The inexplicable destruction of crucial evidence would force the State's Attorney to rely heavily on the testimony of witnesses whose statements would thus be unsupported.

Although a few of these witnesses may be considered unreliable, the sum total of their testimony together with the evidence presented during the course of our investigation leaves no doubt that some members of the Security Section committed a number of criminal acts. However, to place the entire issue of the erosion of constitutional rights through improper police intelligence activities on the testimony of these witnesses alone would work a disservice to the public, and to the cause of justice. The Grand Jury cannot turn back the clock to erase these transgressions, but we can alert the public to guard against such excesses in the future.

Our report, along with a sealed list naming thirteen Chicago Police Department officers who have acted far beyond their authority, has been forwarded to the Superintendent of the Chicago Police Department. Hopefully, appropriate administrative action will be taken against these individuals.

This report together with disciplinary action against the individual police officers and the appropriate civil remedies available to those most directly aggrieved by these illegal actions should serve as a deterrent to others and a foundation upon which to work for the future.

Understanding the Intelligence System

Functions of the Units Within the Security Section

During our investigation the Grand Jury studied the structure and operations of Chicago Police Department's intelligence system. It is our opinion that this system produces inherently inaccurate and distortive data.

The intelligence activity of the Security Section centers around a group of officers in the "Analytical Section." All intelligence data is funneled to the officers, called "analysts." The analysts review data, recommend action, and forward reports to other units of the Chicago Police Department.

Each analyst is assigned a given number of target individuals and organizations. For example, one witness stated that he was responsible for six "anti-war" groups as well as "all the schools in the City of Chicago."

Intelligence reports submitted by operating officers who monitor events and maintain surveillances are one source of the analysts' information. Control officers, who direct the actions of undercover police agents and civilian informants, prepare reports from information received from informants during de-briefing sessions. These reports are then submitted to the analysts. Another source of data for the analysts are newspaper and magazine articles which mention targeted individuals and organizations.

The conclusions and actions recommended were made on the basis of raw data and assumptions without any direct knowledge of the facts.

Until mid-1974, the analysts also had the responsibility of compiling weekly intelligence summaries. The summaries digested all reports and newspaper articles submitted to the analysts during the week. These weekly intelligence summaries, according to a distribution memorandum of the Chicago Police Department, were then forwarded to high ranking police officials and to the office of the Mayor of the City of Chicago.

Intelligence Reports

The Grand Jury inquired into the accuracy and the propriety of the conclusions contained in the intelligence reports of the Chicago Police Department, and we learned that the narrative section of the report contains a summary of the actions and observations of the intelligence unit.

A "Qualification Sheet" listing the names of every person and organization mentioned in the narrative section is attached to the report. Characterizations of such individuals and organizations are included, for example:

John Brown ..... anti-establishment beliefs.
John Smith ..... financial contributor to subject organization.
Jane Roe ..... Communist sympathizer.
John Jones ..... anti-police attitudes.
Ken Doe ..... attorney who represents protestors-activities.

The characterizations of individuals and organizations varied from report to report, usually influenced by the personal beliefs and prejudices of the officer compiling the report. Personal views and prejudices can creep into the most skilled person's work, especially when evaluations are made of ideas, associations and political activities. Those areas of evaluation are particularly prone to distortion.

Security Section supervisors testified that the narrative portion of the report was to be "a strictly factual" account of what occurred. However, many of the reports reviewed by this Grand Jury contained obviously distorted characterizations and conclusions. The characterizations and conclusions were not limited to reports made by the undercover agents and informants, but also the opinions of the control officers who possessed no first hand knowledge of what had occurred.

For example, the report of a meeting where an elected official was a guest speaker stated that the meeting gave that official "an opportunity to take uncontested slaps at the Daley Machine."

The intelligence reports served as a vehicle to pin derogatory labels on persons and organizations. Much too often, these labels had very little basis in fact.

One large community group was labeled a subversive front organization simply because some persons involved with the group were members of an unpopular political organization. Persons who did not belong to this community group but who had attended some of its public meetings were also labeled members of a subversive front organization, solely because of their attendance.

Police officers, while on surveillance, reported the license numbers of all automobiles in the vicinity of a targeted community group meeting. The owners of the automobiles were determined and noted in the report as having parked outside or near the particular group's meeting. Even though that owner had not attended the meeting or had not even driven his car that evening, his name was nevertheless included in the surveillance report which was placed on file in the Intelligence Division. In accordance with police practices, a copy of the report naming him was later forwarded to federal intelligence agencies.

The Grand Jury submits that reports containing such unwarranted, unsupported and erroneous characterizations, assumptions and conclusions are outrageous violations of individual rights guaranteed by our Constitution.

Intelligence Files

The files containing the reports of the Security Section are for the most part organized on a "target group" basis. Each target group, organization, or institution is assigned a basic file number and all reports relating to that organization carry that number. The reports are then filed in chronological order within that organization's file.

For example, let us assume that the file number for XYZ organization is 12345. The first report pertaining to XYZ would be numbered 12345.1, the second report would be 12345.2 and so on.

The mechanism for retrieving data from the files is an alphabetical card index system. The name of every person and every organization mentioned in intelligence reports is listed on the index cards carrying the respective report number. The file number of every subsequent report is then listed on the index card or cards.

The following is an example of a typical index card:

John Doe
Attended XYZ meeting *12345.34*
Spoke against police *24479.56*
Criticized Alderman *67892.25*
Gave money to XYZ Organization *12345.79*
Newspaper article on his views on police *24479.57*
Attended convention *45678.90*
Spoke against war *32456.42*

The contention made by police officials that the Department does not keep files "on individuals" is merely a play on words since the index cards are quickly convertible into a dossier. Testimony disclosed that by using these index cards a file on an individual could be compiled in a matter of minutes. Furthermore, in a substantial number of instances, including one involving a State Senator, actual name files were begun.

Prior to the study of intelligence gathering by this Grand Jury, the security and confidentiality of the intelligence files were non-existent. Employees of law enforcement and intelligence agencies, whether authorized or not, as well as nearly anyone remotely connected with any public office, had almost unlimited access to the information contained in the files. A policy requiring persons seeking this data to display a legitimate law enforcement purpose was seldom, if ever, enforced.

In addition, apparently without the knowledge of the persons responsible for the security of the files, a duplicate set of many of the files was kept at the Chicago Police Department's Navy Pier facility. This graphically illustrates the looseness of the security and the ease with which these reports could be misdirected.

Lack of Guide Lines for Intelligence Officers

The Grand Jury is shocked by the limited education and lack of training of the members of the Security Section. Work as an intelligence officer requires the highest skills in police work, as well as knowledge of political institutions and how they grow and change. We found no provision for educational qualifications and training for intelligence officers.

We found, for example, that the experience and training of one officer transferred into the Security Section was limited to 19 years in the Traffic Division. Others obtained transfers into the unit just to be with friends or relatives. The Grand Jury submits that the people of Chicago deserve far better.

The Grand Jury also noted a definite lack of administrative controls over the Security Section by supervisors within the Police Department hierarchy. When questioned before this Grand Jury as to whether they were aware of the Security Section's activities, high ranking police officials pleaded ignorance. If this is true, these police officials grossly neglected their duty to supervise the Security Section.

Further, the Grand Jury must point out that this testimony was contradicted by some police officers in the Security Section who said that some of the high police officials had been informed, and did know of their activities.

Transmittal of Data to Federal Agencies

Testimony before this Grand Jury revealed a close working relationship between the Chicago Police Department's Security Section and federal intelligence agencies.

From 1969 to 1971, the Security Section was in almost daily contact with the United States Army 113th Military Intelligence Group, then headquartered in Evanston, Illinois.

Some witnesses testified that intelligence data collected by the Security Section was routinely forwarded to the 113th Military Intelligence Group. Other witnesses told us that during this time the 113th Military Intelligence Group planned and conducted intelligence gathering operations in direct cooperation with the Chicago Police Department's Security Section.

In pursuing this testimony, a high ranking intelligence officer of the U.S. Army informed representatives of this Grand Jury that crucial records and documents had been destroyed. The absence of this documentary evidence thwarted our efforts to uncover the Army's role in sponsoring improper police intelligence activities.

The intelligence data acquired by the Security Section was also routinely funneled to the Federal Bureau of Investigation resulting in the creation of duplicate files by the FBI. Evidence showed that on at least two occasions employees of these federal agencies violated federal law by supplying data contained in their files to the Security Section.

The mere fact that the information developed by the Security Section was, by this process, a part of the files of the two agencies gave greater credence to the conclusions originally drawn by the Security Section.

One police officer testified that it was his practice to list any person who attended two public meetings of an organization as a member of that organization. The conclusion that this person was a "member" of the organization was forwarded as a *fact* to the FBI. Subsequently, a law enforcement agency seeking background information on that person would be told that according to FBI files, that individual was or is a member of a particular organization. The number of innocent persons harmed by this unwarranted practice is impossible to estimate.

Since federal agencies accepted data from the Security Section without questioning the procedures followed, or methods used to gain information, the federal government cannot escape responsibility for the harm done to untold numbers of innocent persons.

Furthermore, the degree of federal involvement was demonstrated by a recent congressional study which indicated that as much as $779,000 in federal funds was given to the Chicago Police Department Intelligence Division between 1972 and 1974.

Spying on Community Groups

Targets and Methods

In 1969, the Security Section of the Chicago Police Department launched a massive intelligence campaign against various community groups active in the Chicagoland area. The Grand Jury found that none of the many community groups brought to our attention advocated violence, nor had they exhibited any history of violence. Under no circumstances could these community groups be considered a proper target of the Chicago Police Department's intelligence gathering activities.

During this campaign, intelligence officers were assigned to attend public meetings conducted by these community groups. The officers summarized and characterized speeches including those delivered by public officials, representatives of the news media and members of religious groups. The intelligence officers also attempted to identify members of the general public who were in attendance.

Undercover agents and informants were used to penetrate the private planning sessions of the community groups. The undercover agents had no training as police officers, but were receiving full salaries as patrolmen. Informants were paid for each report.

The undercover agents and informants furnished the Security Section with listings of members and contributors to these organizations as well as background data on selected members.

Three undercover intelligence officers testified that they and other undercover agents and informants were instructed by control officers to assume roles of leadership in the community groups. A number of the agents and informants testified that they had succeeded in attaining positions of leadership.

One undercover officer became the president of the community group he had been instructed to infiltrate. After the election of the undercover agent, the organization began, not surprisingly, to experience a loss of membership and was soon in financial difficulty.

The Grand Jury cannot emphasize strongly enough that none of the testimony indicated even the slightest presence of any type of criminal activity with the various community groups under scrutiny.

After five years, the Chicago Police Department had nothing to show for their intensive efforts except a substantial waste of money and time, and a serious intrusion into the Constitutional rights of the people of Cook County.

Reasons Offered for Infiltration of Community Groups

The Grand Jury has carefully considered the official explanations given by the leadership of the Chicago Police Department for policy spying on community groups and find them to be without any merit.

The first explanation offered to this Grand Jury by the leadership of the Chicago Police Department was that the "violent nature" of these groups required monitoring. This reason, however, was totally rebutted by the testimony of both undercover officers and members of the community groups. Undercover officers testified that they never witnessed the commission or advocacy of criminal activity by members of targeted community groups.

In fact, some undercover officers testified that

they repeatedly questioned their superiors as to the need for continued infiltration since it was obvious that the organizations were peaceful and open in their operations.

The peaceful nature of the community groups was underscored by testimony of the police officials themselves who admitted that only a handful of disorderly conduct arrests resulted from five years of intensive intelligence activity.

"Traffic control" was another justification for infiltration offered to this Grand Jury by police officials.

The testimony of undercover agents and members of the community groups totally rebutted this explanation. These witnesses testified that at least 24-hour public notice was usually given for meetings and demonstrations in order to obtain a large turnout as well as news media coverage.

Even if advance notice of such meetings and demonstrations had not been given, it is difficult to understand why police officials could consider traffic control an excuse to ignore the Constitution of the United States.

The final argument given by public officials for this intelligence activity has all the earmarks of a Police State. They argued that unless community groups are infiltrated by undercover agents or informants, the police will not be able to determine whether the community group is peaceful or violent.

In other words, these police officials *presumed* that persons who exercize their constitutional rights pose a threat to the community until they *proved* otherwise to the satisfaction of the police officials.

Such an attitude is contrary to the fundamental principles of democratic government which encourage active participation in the political process through the free and open exchange of ideas and associations.

The overwhelming weight of the evidence presented to this Grand Jury clearly established that the true motivation for spying on community groups was political. All the targeted community groups had several characteristics in common: They represented people coming together to solve problems and at one time or another were critical of the policies of the Mayor of Chicago. In addition, some groups which received the most intensive scrutiny had also been openly critical of some policies of the Chicago Police Department.

The political nature of this intelligence gathering activity is demonstrated further by the intensive police interest in certain elected officials who were critical of the local political power structure.

Extensive intelligence files were maintained on such elected representatives. In some cases, files contained summaries of their speeches, and reports on their public appearances, as well as notations regarding their associates, financial contributors, and campaign issues.

An example of the gross political misuse of the intelligence operation can be seen from a comparison of two intelligence files. One file deals with a prominent elected official whose reputation is beyond reproach and who is well known for voicing his opposition to the established political forces in Chicago. The other file deals with the Legion of Justice, a now defunct organization which not only publicly advocated violence as means of securing its objectives, but which also publicly admitted the commission of such acts.

The file on the elected official is composed almost exclusively of undercover agent and informant reports, while the file on the Legion of Justice contains newspaper clippings almost exclusively. The elected official's file is more than five times the size of the file on the entire membership of the Legion of Justice. Political motivation is the only logical explanation for such a disparity.

The Effect of Police Spying on Community Groups

The open presence of police officers recording names and taking notes at public functions sponsored by a community group has an obvious detrimental effect on that group. The mere presence of these officers inhibits individuals from exercising their right of free speech. The fact that a community group may be under investigation fosters the conclusion that the group has broken or is breaking the law. Such a conclusion, even though erroneous, tends to drive away members and financial contributors.

The use of undercover agents and informants to obtain lists of members and financial contributors is a flagrant violation of constitutional rights. The freedom of persons to associate for the advancement of beliefs and ideas is a fundamental aspect of liberty. Unless a compelling governmental interest can be demonstrated, a community group has a constitutional right to keep its membership confidential.

Similarly, the mere presence of undercover agents and informants at private meetings infringes upon constitutional rights. Citizens not only have the right to associate freely but they are entitled to a reasonable expectation of privacy in their association with one another.

When engaged in constitutionally protected activity, citizens must be free to exercise these rights without fear that their activities will be recorded in governmental files. When the police maintain records on an individual simply because that individual has exercised his right to speak and associate freely, it is but a short journey to a Police State.

A program in which a police agency surreptitiously seeks to obtain control over a community group's policies and goals must not be tolerated in a free society. Such a program is indefensible and

inexcusable. It is neither the right nor the responsibility of the police to determine whether a community group is to grow or wither.

Finally, political spying by police lowers the community's respect for law enforcement. Without the respect and support of the community, law enforcement agencies cannot operate effectively. The decision by high police officials to indiscriminately infiltrate community groups makes the difficult job of responsible law enforcement officers even more difficult.

Improper Intelligence Gathering Activities

Police Involvement in Criminal Acts

Evidence including testimony of police officers, established without question that certain members of the Chicago Police Department's Security Section committed criminal acts in order to gather intelligence data. Witnesses testified that certain high level police personnel were aware of this activity.

Some officers testified that they believed it their duty to burglarize offices to gather intelligence data and to disrupt the activities of organizations by destroying mailing lists, lists of financial contributors, office equipment and even by stealing money.

Another method used to disrupt the activities of organizations was to inflict property damage on one organization and make it appear that the acts of vandalism were actually committed by a rival organization in order to cause friction between the organizations.

These acts of destruction were not limited to locally based organizations. In one instance, a police officer admitted that he illegally entered the Chicago offices of a presidential candidate, and removed records and office equipment in order to disrupt his campaign. In another instance, testimony indicated that an undercover officer not only permitted but actually encouraged a group to violate the residential picketing statute. This is another example of flagrant disrespect for the law by those sworn to uphold law.

In one of the most bizarre instances, a police officer admitted that he became the president of an organization and in that capacity urged members to commit acts of violence. That officer specifically urged members to shoot Chicago Police Officers. He even demonstrated th most strategic placement of snipers in downtown Chicago which would make possible the highest number of casualties. This testimony was confirmed by members of the organization.

Certain intelligence reports reviewed by this Grand Jury contain accounts of conversations which, because of their nature, could only have been acquired through illegal electronic eavesdropping.

Several officers said they were aware that illegal eavesdropping was used to gather intelligence information. One officer admitted aiding in the illegal tapping of telephone conversations on a number of occasions from 1969 to 1972. The officer stated that his instructions were "don't get caught." Although the officer testified that he was never aware of the targets of the eavesdropping, he said the targets were listed in an electronics log maintained by the Security Section.

This Grand Jury subpoenaed the electronics log but was informed by the legal representatives of he Chicago Police Department that the records of electronic surveillances conducted prior to January of 1973 had been "routinely destroyed." Ironically, the log for photographic equipment going as far back as 1968 was not "routinely destroyed."

Several witnesses testified that members of the Security Section were present when acts of violence were committed against peaceably assembled individuals. These officers took no action to prevent the acts of violence or to arrest the guilty. In fact, on other occasions members of the Security Section tried to incite these same individuals to violence through the use of the most foul and abusive language. This was all part of a deliberate plan of harassment.

One group operating during this period was an organization known as the Legion of Justice, a now defunct militant organization which advocated violence as a means of obtaining its objectives. There is no question that some members of the Security Section maintained a close working relationship with the Legion of Justice. Our conclusion is not based solely upon the testimony of former members of the Legion of Justice, but rather on the totality of evidence presented to this Grand Jury.

In spite of the Legion of Justice's public statements accepting responsibility for criminal acts and their avowed intention to continue to commit such acts, the Security Section never engaged in a serious attempt to monitor or infiltrate this legitimate target of police scrutiny.

The Legion of Justice burglarized offices of various organizations during the time when such organizations were subjects of intensive surveillance and harassment by the Security Section. Officers of the Security Section also witnessed acts of violence by the Legion of Justice against members of these organizations, but failed to come to the aid of the victims.

Even if we disregarded the testimony of the members of the Legion of Justice and viewed the evidence in a light most favorable to the Chicago

Police Department, the fact remains that at the minimum, the Security Section acquiesced and encouraged the commission of illegal acts. The fact that officers who are sworn to uphold the law either condoned or directed such activities severely stains the integrity of law enforcement.

The hierarchy of the Chicago Police Department cannot escape their moral responsibility for the actions of members of the Security Section. They either condoned the actions or grossly neglected their supervisory duties.

The Days of Rage

Some Chicago police officers attempted to justify the surveillance of community groups by pointing to the October, 1969 disturbance known as "The Days of Rage."

The Weatherman faction of the Students for a Democratic Society had publicly announced their intention to commit acts of violence in the City of Chicago. This announcement together with their past history of violence placed that group within the scope of legitimate police infiltration and surveillance.

Undercover agents were able to successfully infiltrate the group. The agents identified the ring leaders, the locations targeted for violence, and the dates set for the acts of violence. The undercover agents forwarded this information to their superiors approximately a week prior to the actual disturbances.

The undercover officers who penetrated the group testified that they submitted reports detailing accounts of the meetings in which S.D.S. leaders agreed to commit acts of violence. These officers also witnessed acts in furtherance of this conspiracy including the gathering of weapons, the drawing of maps, and preparations for escape.

Armed with this information, the police could have arrested the leadership of the Weatherman faction of the S.D.S., and prevented the riots, but they did not. The Grand Jury asked Chicago police officials why they did not prevent the riots and the resulting destruction of property and physical harm, even though they possessed detailed, corroborated evidence. Their reply was that the acts of violence *must actually occur* before any charges can be brought to the State's Attorney's office.

This, of course, is absurd and totally wrong. In Illinois, it is a crime to conspire to commit an offense if a step in furtherance of the agreement is committed. In this case, weapons were gathered, maps were drawn, escape routes established, and so forth.

The callous disregard for the health and property of those harmed during the "Days of Rage" is characteristic of the entire police spying operation. Peaceful groups were spied upon and disrupted for apparently political reasons while a violent group was permitted to carry out their intended plan of violence.

The sole and highest responsibility of law enforcement officials is to carry out their sworn and solemn duty to protect the public. Our investigation uncovered flagrant violations of this solemn oath. The responsibility for this abuse rests squarely on the leadership of the Chicago Police Department and the City of Chicago.

Recommendations

The Grand Jury Investigation 655 which focused exclusively on the Chicago Police Department's improper methods of gathering intelligence data clearly demonstrates that existing police intelligence practices pose a grave threat to the individual rights and freedoms which are basic to our democratic society.

Safeguards must be established and enforced to prevent a recurrence of these serious invasions of constitutional rights. However, the safeguards should not hamper the proper and legal use of undercover agents and informants to uncover criminal activity and to bring to justice those who make their living through crime.

Therefore, we submit the following recommendations in the hope that public consideration and governmental action will produce a formula for police intelligence which will protect individual rights and still permit the detection and apprehension of criminals.

Legislation

We, the Grand Jury, urge the Illinois General Assembly to enact legislation designed to prevent the indiscriminate infiltration of community groups and to codify an individual's right to seek access to his or her intelligence file. The following is submitted for consideration by the General Assembly in formulating the legislation.

(1) Community Group Infiltration

The responsibility for the infiltration of a community group should rest firmly with the head of the law enforcement agency seeking authority to infiltrate—in Chicago, the Superintendent of Police. The application to infiltrate should also have the written approval of the highest elected official directly responsible for the law enforcement agency.

In order to minimize the adverse effects of infiltration on the community group, authorization to infiltrate through the use of undercover agents or paid informants should be limited to 90 days, with extensions available when necessary.

The final approval for infiltration should come from a body that is not influenced by political considerations. The Grand Jury, an arm

of the judiciary, is best suited for this role. Twenty-three randomly selected individuals who can review a request in secret can best protect the rights of the individual and the general public.

The police agency requesting the authority to infiltrate a community group should be required to present evidence through the State's Attorney to the Grand Jury which clearly demonstrates a legitimate law enforcement need for the infiltration.

The State's Attorney should also be responsible for informing the Grand Jury of the police agency's guidelines for infiltration prior to a vote by the Grand Jury.

If the Grand Jury votes approval for the infiltration, the police agency must report back to the State's Attorney who in turn will report the results of the infiltration to the Grand Jury within 90 days of the authorization. At that time, the Grand Jury may extend authority for the infiltration for additional 90-day periods.

If after the first or any subsequent 90-day period, the evidence does not warrant further infiltration, all files pertaining to the community group and its members which do not directly relate to criminal activities should be destroyed.

The authority to infiltrate should never permit the undercover agent or paid informant to advocate violence or to seek a leadership position within the community group.

A public official or employee who violates such a statute should be held both criminally and civilly liable for his actions.

(2) Access to Intelligence Files

An individual should have the right to the information relating to him or her contained in police intelligence files. That right should be limited only by a clear demonstration of a compelling governmental need for secrecy, such as danger to the life of another. The head of the police agency involved should be held criminally and civilly liable for failure to enforce the legal right of persons to information relating to them contained in police intelligence files.

Intelligence Guidelines

We recognize that good judgment and proper police attitudes cannot be accomplished through legislation. However, the leadership of the Chicago Police Department can by finally recognizing their responsibility to protect the civil rights of the public they are sworn to serve. The first step toward this goal would be to establish and strictly enforce guidelines regulating the use and methods of gathering intelligence data.

Police must no longer regard a person or organization which questions police conduct as being anti-police or subversive.

We urge the Police Department to consider the following proposals:

(1) Intelligence Files

Intelligence files should not be kept on persons or organizations unless they are committing or threatening to commit criminal acts, or have a history of criminal activity.

No files should be maintained on any person or organization merely because of the person's position in government or candidacy for public office, nor because of race, creed, ethnic background or political beliefs.

In addition, the existing policy requiring persons seeking intelligence data to display a legitimate law enforcement purpose must be strictly enforced.

Current intelligence files which do not meet these guidelines should be immediately destroyed. All intelligence files should be reviewed at least twice yearly to insure removal and destruction of outdated and erroneous material. Cooperating law enforcement agencies should be notified of the destruction of the data.

(2) Intelligence Personnel Requirements

No officer should be employed in the intelligence work until he or she has received adequate training as a law enforcement officer.

Intelligence Officers should be schooled in political science, the history of the City of Chicago and American history, including an in-depth study of the United States Constitution, with special emphasis on the Bill of Rights.

Conclusion

The Grand Jury wishes to express its gratitude to the State's Attorney and the Assistant State's Attorneys who worked so diligently to aid this Grand Jury in our search for truth.

Because of the gravity of the problems created by improper police intelligence activity and the dire need to build safeguards for the future, we direct the State's Attorney of Cook County to make this report public.

Recent news media disclosures indicate that the Chicago Police Department may be continuing to abuse its intelligence gathering functions through unwarranted and illegal surveillance and infiltration. These allegations merit an immediate investigation by the State's Attorney to determine the validity of the charges.

As we have emphasized in this report, such conduct by those who have taken an oath to uphold and enforce our laws must not be tolerated in a free society.

The State's Attorney is urged to carefully monitor police intelligence gathering practices to prevent future abuse.

(signed)

Sylvester A. Maida
Foreman,
Extended March 1975
Cook County Grand Jury

Linda S. Leon
Secretary,
Extended March 1975
Cook County Grand Jury

ACLU Civil Suits Against State and Local "Red Squads"

Alliance to End Repression, et al v. Rochford, et al., #74 C 3268 (ND. Ill., E. Div.). Class action suit for declaratory relief, injunctive relief, and damages alleging widespread illegal activity—such as intimidation, surveillance, police harassment, and wiretapping against citizens engaged in legally protected political activities—by Chicago Police Department.

Anderson v. Sills. Ch. Div. 1969, 106 N.J. Super. 545. rev'd and remanded, 56 N.J. 210, 265 A. 2d 678 (1970). Suit to enjoin New Jersey State Police from collecting and maintaining intelligence data on constitutionally protected political activity. This suit, now named *Anderson v. Kugler*, was the first of the general surveillance suits. Summary judgment by trial court requiring police to discontinue their surveillance practices was reversed on appeal by the New Jersey Supreme Court, and the case remanded to allow the plaintiffs to produce more precise evidence about the nature and extent of the surveillance practices.

Cannon v. Davis, #978116, Sup. Ct. of the St. of Calif. Complaint filed June 1, 1970. Taxpayer's suit to enjoin the Los Angeles Police Department from spending public funds or using city property for the purposes of surveillance of "any organization, group, association or person, unless the department or any officer therein has information that the subjects of the surveillance will commit or intend to commit a criminal offense."

John Doe, et al. v. Schneider, et al., 75-38-C6, USDC. Kansas Bureau of Investigation has been collecting dossiers on private citizens for a number of years. Files were scheduled for destruction; AG's office and KBI agreed not to destroy files until case was heard. Action asks that persons named in files be notified by court so that they have right to pursue possible legal remedies for invasion of privacy. In discovery.

Greater Houston ACLU v. Welch, 74-H-59, (S.D. Tex.). Suit against Houston Police Dept. for maintaining and disseminating "non-criminal information" on more than a thousand politically active Houston citizens, for more than ten years. TRO granted 1/17/75.

Handschu v. Murphy, 349 F. Supp. 766 (S.D. N.Y. 1973). Suit challenging undercover operations of the Bureau of Special Services of the NYC police department. Plaintiffs seek declaratory and injunctive relief enjoining all surveillance activities of the Bureau—infiltration, agent provocation, wiretapping and bugging—having no reasonable relationship to any law enforcement purpose. Police Commissioner's affidavit in support of motion to dismiss admits many of plaintiffs' allegations.

Kent State V.V.A.W. v. Fyke, #72-1271 (N.D. Ohio). Suit for damages, declaratory and injunctive relief against Kent State University for placing undercover campus police informant among plaintiffs, who attempted to induce them to purchase weapons from him and to blow up campus buildings.

New Jersey v. Buck, Docket No. 2769, Mercer County Court, N.J. Defendant charged with misdemeanor for objecting to and obstructing photographic surveillance by state police in corridor of State House during demonstration. Defense on grounds of unconstitutional police conduct. Conviction was appealed to Appellate Division, which reversed June 6, 1975, on grounds of insufficient evidence.

Philadelphia Yearly Meeting v. Tate, 71 Civ. 849 (E. D. Pa. 1971). Complaint for declaratory and injunctive relief from political surveillance practices of Philadelphia Police Department. Primary practice challenged is that of keeping files on all demonstrations and known demonstrators in Philadelphia as admitted openly on numerous occasions by former Police Chief, now Mayor Rizzo.

Pomeroy and Brannin v. Texas Dept. of Public Safety. et al., USDC, Austin. As a result of appearing at a City Council meeting and expressing opposition to the participation by the City of Dallas in a nuclear local power project, plaintiffs were placed under surveillance and a file was constructed and labeled "Subversive". File was sent to Pomeroy's employer. Pomeroy had also been seen talking to Brannin when he had left the City Council meeting. Brannin is an old Socialist who had run for governor in 1936. Both Plaintiffs bringing damages action for $20,000 each and ask that disclosure be made of all reports of non-criminal activities on all persons.

Ritchings v. Valenti, et al. N.J. Superior Ct., Ocean County. Damage action against members of the Point Pleasant Police Dept. and the Mayor for alleged electronic surveillance of former Republican Chairman's home.

Sckorohod v. Stafford, Case #359897, St. Louis County Circuit Court. On March 6, 1974 approximately 20 persons gathered in support of the United Farm Workers position against a store's practice of selling boycotted products. The demonstration was lawful and orderly; however, the police photographed and videotaped the demonstrators. The police told the demonstrators that such tactics were the standard policy.

Vietnam Veterans Against the War v. Benecke, #19572-3, W.D. Missouri, complaint filed July 26, 1971. Class action to enjoin Kansas City police from interfering with and conducting surveillance of demonstrations and other lawful activities of plaintiffs. Motions for class action determination and production of documents pending.

White v. Davis, California Superior Court. Complaint filed June 15, 1972. Challenge to the presence of undercover police agents as students in classes and other campus activity. Motion to dismiss granted, Oct. 6, 1972. California Supreme Court on March 24, 1975 held that lacking connection with illegal activities surveillance of university classes, etc., was unlawful restraint on free speech.

Yaffe.v. Powers, 454 F. 2d 1362 (1st Cir. 1972). Challenges photographic surveillance of public meetings and maintenance of dossiers on persons engaged in political activity, by the Fall River, Mass. police department. Denial of class action reversed by Court of Appeals; remanded for class determination and discovery.

Remedies for Intelligence Agency Abuses: Testimony Before the Select Intelligence Committees

Most of the time spent by the committees and their staffs have gone to investigating the activities of the intelligence organizations and uncovering abuses. With their inquiries into the intelligence agencies drawing to a close, Pike and Church committees are seeking to draw up recommendations to prevent future abuses and have each held in December several days of public hearings on remedies.

Throughout 1976 Congress, the public, and the executive branch will be wrestling with the problem of remedies; *First Principles* will be devoting substantial attention to how the intelligence agencies can be brought under effective control and made responsive to the Bill of Rights. Here we summarize the salient points from the testimony of present and former government officials presented in December before the House and Senate Intelligence committees. Both committees held hearings on covert operations, the Senate Committee took testimony on the charter of the FBI as well.

Covert Operations

The Church Committee held two days of Public hearings on covert operations. The first was devoted to the presentation of a staff study on the Chile intervention; the second day featured a panel consisting of Clark Clifford (former Secretary of Defense and Chairman of the President's Foreign Intelligence Advisory Committee), Cyrus Vance (former Deputy Secretary of Defense), David Phillips (retired CIA official), and Morton Halperin (former NSC staff member). The Pike Committee heard statements on covert action from McGeorge Bundy (former Special Assistant to the President and Chairman of the Forty Committee), and Nicholas Katzenbach (former Under Secretary of State and Attorney General). The Ford Administration declined to provide any witness who would publicly discuss covert operations.

All of the witnesses argued that there had been excesses in the use of covert operations and that at a minimum the size of the program should be cut back and tighter controls instituted. Katzenbach and Halperin proposed total abolition of the authority to conduct such operations while the other witnesses advocated retaining their use in certain limited circumstances.

While Katzenbach and Halperin both conceded that in some circumstances covert operations might be beneficial, they argued that they should be terminated because the costs outweigh the possible gains. Abolition was necessary, Katzenbach suggested, to restore public confidence in the government and to allow formulation of a foreign policy which would enjoy public support. He noted also that the United States often gets blamed even for things which it has not done. Finally he warned that the secrecy which surrounds covert operations leads not only to misjudgments but to abuses of power. Halperin also emphasized the dangers of secrecy and pointed to a record of American covert actions abroad which have violated our political principles; he expressed skepticism about proposals to bring such operations under effective executive or legislative control.

In his testimony before the House committee, Bundy was equally skeptical about the past value of covert operations and concluded that "too often the covert activities of the United States government have cost us more that they were worth." He proposed banning all covert actions, including intelligence collection and counter-intelligence activities, and allowing only four exceptions: actions in support of open warfare, intelligence collection such as U-2 flights, covert actions to counter international terrorism and nuclear threats, and financial support to democratic forces threatened by extremists from *either* the right or the left.

Bundy also felt that those few covert actions which are actually taken should be subjected to a new system of presumptions and limitations. First, no action should be taken covertly if it could be taken openly; the purpose of acting covertly must not be to avoid debate in he United States. Second, the "plausible denial" doctrine should be turned around—no covert operation should be authorized unless it could be persuasively defended if it were exposed. And third, the initiative for planning covert actions should originate not within a CIA bureaucracy generating schemes to peddle to

the executive, but with political leaders themselves.

Clifford and Vance suggested an even narrower exception to the general rule against covert action —namely that they should be undertaken only when vital to the national security. Both laid stress on the need for a formalized decision process. Clifford emphasized the role of a joint congressional committee and suggested that it be informed in advance about all proposed operations, giving its members an opportunity to discuss a proposed operation with the President before it was initiated.

Phillips warned the committee that covert actions have tended to get out of hand because of their great appeal to political leaders; he stressed that covert actions could only be of value in support of an overt policy and program. He also suggested that the covert operations mission be taken from the CIA and placed in a very small unit with a small budget.

FBI Charter

The Senate Intelligence Committee heard testimony on the intelligence function of the FBI from Attorney General Levi, FBI Director Clarence Kelly, and William Ruckelshaus (former Deputy Attorney General and former Acting Director of the FBI). All three stressed the importance of making the FBI accountable to the Attorney General and the Congress and conceded that this had not been the case under Hoover.

While agreeing to the need for some statutory basis for FBI intelligence operations and to the value of congressional oversight, Levi placed greatest emphasis on both the housecleaning that he said had already been done and on the importance of individual integrity:

> No procedures are fail-safe against abuse. The best protection remains the quality and professionalism of the members of the Bureau and the Department.

In the course of his testimony, Levi revealed the outlines of the draft guidelines prepared in the Justice Department to govern the conduct of intelligence investigations by the FBI. The draft subsequently made public by Justice includes recommendations which would

- permit the FBI to conduct intelligence investigations on its own initiative or when directed by the Attorney General.
- authorize the use of informants, mail covers, and electronic surveillance without a warrant.
- permit "preventive action" with the approval of the Attorney General when force or violence poses an imminent threat to life or to essential functioning of government.

Kelley stressed the need for a legislated charter conferring authority on the Bureau to conduct intelligence investigations which are not directly related to the investigation of a particular crime: "The FBI urgently needs a clear and workable determination of our jurisdiction in the intelligence field." He strongly endorsed the proposal in the draft Justice guidelines to give the FBI authority to take preventive action in order to meet an imminent threat to life or property and resisted proposals to require warrants for actions which the Bureau now conducts on its own authority or that of the Attorney General.

Ruckelshaus proposed a series of reforms designed to ensure effective control of the Bureau by the Justice Department and the Congress which included limiting the term of the Director to eight or nine years and requiring him to report to the President through the Attorney General. He proposed the creation of a joint oversight committee which would have access to all Bureau activities. He recommended that warrants be required for wiretapping or the use of informants.

Freedom of Information Act Litigation: Handbook and Conferences

The ACLU and the Freedom of Information Clearinghouse are jointly sponsoring conferences and a handbook on Litigation Under the Freedom of Information Act. The conferences are scheduled for Chicago, Mar. 11-12; New York, Mar. 25-26; San Francisco, Apr. 26-27; and Los Angeles, Apr. 29-30. The handbook, approximately 180 pages, covers the conference material—background and procedures for using the amended FOIA, attorney's fees, trial strategy, exemptions (b)(1) through (b)(7), and the Privacy Act. The handbook is currently available to the public in preliminary xerox form for $18.00 (prepaid) and to ACLU Chapters for $13.00. In March, the final, paperback version will be available for $15.00. Both versions may be ordered for $25.00.

People interested in ordering the handbook (prepaid, please) or in getting more information on the conferences should write Christine Marwick, at the project office, 122 Maryland, N.E., Washington, DC 20002.

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Point Of View (continued)

significantly altered by an Allende regime, and an Allende victory in Chile would not pose any likely threat to the peace of the region.

None of this mattered. Successive Presidents wanted Allende kept out of office and the CIA tried.

Nor was the motive to support Eduardo Frei, a Christian Democrat who we are often told was the centerpiece of American policy because he stood for American ideals in Chile. The staff report tells us that the Kennedy Administration prefered a center-right coalition in Chile and that only when it was unable to put that together did it support both the Christian Democrats and a right-wing coalition.

What form did this American "aid" take?

The most extensive CIA operations in Chile consisted of propaganda which mainly involved buying "assets" in the media who did what they were told:

> wrote articles or editorials favorable to U.S. interests in the world . . .; suppressed news harmful to the United States; and authored articles critical of Chilean leftists.

And more:

> The covert propaganda efforts in Chile also included "black" propaganda—material falsely purporting to be the product of a particular individual or group.

Thus we honored the free press of Chile.

This propaganda effort was also directed at the American press, particularly as part of the campaign to frighten the Chilean people about the consequences of Allende coming to power. When *Time* magazine was about to run a story supporting Allende's view of himself as a constitutional moderate, *Time* correspondents were given what the staff report describes—in quotation marks—as an "inside" briefing which succeeded in changing the thrust of the story to fit the CIA's line.

Propaganda was only one technique used. The CIA also purchased control of the media by creating, buying, or subsidizing newspapers and press services. It also intervened actively in the affairs of private organizations in Chile seeking to support anti-communist lines. In addition, "covert American activity was a factor in almost every major election in Chile in the decade between 1963 and 1973." This intervention was not at the request of Chilean leaders. Indeed, they were not asked or even informed; in the 1964 election, when the aid to Frei was massive, the Agency considered telling him and then decided not to.

The staff report found no evidence that the United States was involved in the coup that actually led to the fascist military regime that now rules Chile but, in a more general sense, American policy was clearly successful. Allende was kept out of power for a long time and, when he was finally elected anyhow, he was thrown out. No socialist is likely to be elected again in Chile for a very long time. To accomplish this objective a fact that we aided and abetted the destruction of a free civilian government in a free society was always seen by our Presidents and the CIA as, at best, irrelevant.

For those of us for whom this is a deep tragedy, the lesson should be clear. Covert operations have not been and cannot be an instrument for the promotion of democracy and they must be abolished.

Point Of View

Chile Report

MORTON H. HALPERIN

In early December the Senate Intelligence Committee quietly released its staff report, **Covert Action in Chile: 1963-1973.** It is one of the most important documents on the activities of the American intelligence Community yet to emerge—it is the only publicly available study of what the CIA's covert action programs abroad actually consist of.

The committee staff has conducted other studies but according to current plans these will not be released. However, we are told in the report that

> The pattern of United States covert action in Chile is striking but not unique. . . . The scale of CIA involvement was unusual but by no means unprecedented.

Since this is the only detailed look that is based on access to official documents that we are likely to get, it is worth close attention.

The Chilean context is important—for those not familiar with Latin American politics the history of Chilean democracy comes as a shock when compared to the repressive rule of the military junta:

> Chile's history has been one of remarkable continuity in civilian democratic rule. From independence in 1818 until the military *coup d'etat* of September 1973, Chile underwent only three brief interruptions of its democratic tradition. From 1932 until the overthrow of Allende in 1973, constitutional rule in Chile was unbroken.

From the description that we are given by the coup's apologists, one might have assumed that the covert operations of the United States in Chile had been designed to help perpetuate one of the few open democratic systems in the worl. But this was not the case. The documents quoted in this report make it unmistakably clear that the CIA had just one goal in Chile: to keep Allende out of power. The CIA actions were aimed first at preventing his election; when this finally failed; at preventing him from actually taking office; and finally, at driving him from power. The opposition to Allende was apparently based on the symbolism of his self-proclaimed Marxism; it was a form of knee-jerk anti-communism.

As in other situations in which covert action was employed, the intelligence community did not support administration claims that Allende seriously threatened American security. National Intelligence Estimates, summarized in the staff report, emphasized that Allende was a nationalist who would chart an independent course and would not subordinate the interests of Chile to any foreign nation. The policy experts involved in decisions towards Chile on matters other than covert action were also ignored. As summarized in the staff report, a presidential request to an interagency policy group for an evaluation of an Allende victory produced this assessment:

> the United States had no vital interests within Chile, the world military balance would not be

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122 Maryland Avenue, N.E., Washington, D.C. 20002.
(202) 544-5380

Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad.

JAMES MADISON TO THOMAS JEFFERSON,
MAY 13, 1798